TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]42

CORONA COAL COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 5, 1922.

(28,913)

(28,912)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 380.

CORONA COAL COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1922.

1 Court of Claims.

No. 90-A.

CORONA COAL COMPANY

vs.

THE UNITED STATES.

I. *History of Proceedings.*

On April 23, 1921, the plaintiff filed its original petition.

On June 22, 1921, the defendant filed a demurrer to said petition.

On October 17, 1921, the demurrer was argued and submitted by Mr. Perry W. Howard, for the defendant, and by Mr. Forney Johnston, for plaintiff.

On October 31, 1921, the demurrer was sustained in part and plaintiff was given thirty (30) days in which to amend petition, with an opinion by Hay, J.

(NOTE.—This opinion will be found on p. 36 of this record.)

amended petition.

Said amended petition is as follows:

On January 20, 1922, by leave of Court, the plaintiff filed its

2 II. *Amended Petition.*

Filed Jan. 20, 1922.

Amended Petition.

To the Honorables the Chief Justice and Judges of the Court of Claims:

The petition of Corona Coal Company, a corporation, respectfully shows unto your honors the following facts:

I.

Petitioner is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business in the State of Alabama.

Petitioner's chief business has been and is the mining and sale of coal, for the purpose of which petitioner has invested a large amount of money in coal property and in building up an organization and business, including, through its owned or its allied agencies, a large investment in terminal and lighterage equipment and facilities at Gulf ports for the storage and loading of bunkerage coal.

3 Petitioner's normal output of over two thousand (2,000) tons per working day has made the question of an assured car supply of paramount importance to petitioner in the operation of its properties and in the maintenance of its organization.

For the purpose of marketing a fixed portion of its output under conditions which would assure to petitioner an unfailing and obligatory supply of cars, petitioner or petitioner's predecessor, Corona Coal and Iron Company, selected certain railroad companies and entered into contracts with them for the sale of coal, on the respective dates and in the manner and form as shown by Exhibits A, B, and C hereto attached, which are expressly made a part of this petition, to be referred to as often as may be necessary. The aforesaid contracts may be briefly summarized as follows:

EXHIBIT A.

Date: May 22, 1917.

Contracting Railroad: Vicksburg, Shreveport and Pacific Railway Company, a corporation of the State of Louisiana.

Payment: On or before the fifteenth of the following month for all coal shipped during the preceding month.

Car Supply Provision: Railway Company to furnish cars for the loading of coal contracted for.

Tonnage: 120,000-140,000 tons, between July 1, 1917 and July 1, 1919.

4 EXHIBIT B.

Date: May 22, 1917.

Contracting Railroad: Alabama and Vicksburg Railway Company, a corporation of the State of Mississippi.

Payment: On or before the fifteenth of the following month for all coal shipped during the preceding month.

Car Supply Provision: Railway Company to furnish cars for the loading of coal contracted for.

Tonnage: 115,000-135,000 tons between June 1, 1917 and July 1, 1919.

EXHIBIT C.

Date: December 1, 1917.

Contracting Railroad: The Morgan's Louisiana and Texas Railroad and Steamship Company, The Louisiana Western Railroad Company, and The Lake Charles and Northern Railroad Company, corporations of the State of Louisiana.

Payment: To be made as soon as bills are rendered, checked and audited.

Car Supply Provision: Coal to be loaded in purchaser's equipment where possible.

Tonnage: The purchaser's requirements (70,000-100,000 tons) between June 15, 1918 and June 15, 1919.

In July, 1917, for valuable consideration petitioner acquired all of the rights, properties and assets of said Corona Coal and Iron Com-

pany and assumed the performance of all of its contracts and obligations, including the aforesaid contracts entered into by said Corona Coal and Iron Company (Exhibits A and B, supra) by and with the acquiescence and consent of the contracting railroad companies.

In pursuance of the above mentioned contracts, entered into or assumed by petitioner in reliance upon the identity and credit of the respective purchasers and their ability and obligation to control an assured car supply for the loading of the coal contracted for by the respective purchasers, and upon the normal shipping requirements of privately owned and operated systems of railroad as the contracting purchasers, petitioner complied with the obligations of said several contracts and accepted settlement from the respective purchasers on the basis and in the manner agreed upon as aforesaid until after the President of the United States, in pursuance of his proclamation dated December 26, 1917 (40 Stat. L. 1733) took over the possession and control of all of the systems of railroad in continental United States at noon on December 28, 1917, including the railroad systems of the above mentioned purchasers with which plaintiff or its predecessor had entered into contracts.

III.

None of the above mentioned contracts were assigned by the contracting parties to the United States, nor has petitioner agreed to the substitution of the United States in lieu of the several railway companies with which alone petitioner entered into contract as aforesaid. In taking over the railroad systems of the United States the President of the United States did not effectually assume to become bound by the contract obligations of the respective owners. Nor were the operations of the several systems under Federal Control accommodated to the normal or individual requirements of the several owners in contemplation at the time of the several contracts. On the contrary, in lieu of the normal operations of the respective railway companies with which petitioner had entered into contracts as aforesaid, the said railway properties were during Federal Control operated from the primary standpoint of national unity and without reference to the traffic ordinarily moving over the respective railways or to their individual advantages or requirements.

Incidental to Federal Control of railroads the United States also assumed control of the distribution of coal cars, without reference to the outstanding obligations of the several carriers and free from any lawful obligation relating thereto; and under the exertion of other war powers assumed control of the distribution of coal through the United States Fuel Administration and asserted the right to fix the price at which it might be sold.

IV.

Conditions in relation to the production and distribution of coal and the supply of cars having been thus radically changed by the

action of the United States by reason of the facts aforesaid and by reason of the action of the United States in relation to hours, wages and conditions of labor, and the cost of production and reasonable value of the coal originally contemplated by said contracts, but thereafter purchased or requisitioned from petitioner by the United States during Federal Control for use on said railway systems, having radically increased, and the United States having, through its established agencies, fixed and announced the general sale price of coal produced by petitioner, petitioner avers that the prices so fixed and announced by the United States (through the agency commonly known as the United States Fuel Administration) constituted the minimum prices on which settlement should be made for coal purchased, requisitioned or taken by the United States Railroad Administration from petitioner, in the absence of concurrence by petitioner in a lower price.

The agents of the United States representing the President of the United States and his agent or agency, the Director General
8 of Railroads, commonly known as the United States Railroad Administration, insisted that settlement for coal purchased or taken from petitioner during Federal Control for use on said railway systems should be made on the inadequate basis contemplated by the aforesaid contracts in respect of which there was no privity or mutuality of obligation on part of the United States. Because of the complete difference in identity between the several parties with which plaintiff had entered into contract, as aforesaid, and the United States, and because of the lack of mutuality in obligation as between petitioner and the United States in respect of said contracts, and because of the arbitrary control asserted and exercised by the United States over the price and distribution of coal, and over the distribution of cars without necessary relation to outstanding obligations such as referred to above, and for other lawful reasons, petitioner declined to recognize and be bound by the above mentioned contracts in so far as the prices thereby established were insisted upon by the United States Railroad Administration; and petitioner completed the shipments of coal for the full period covered by said contracts requisitioned or ordered by the United States Railroad Administration or ordered by the United States Fuel Adminis-
9 tration, for use on said railway systems during Federal Control, on notice to the United States Railroad Administration and to the United States Fuel Administration that petitioner would accept settlement only on the basis of the market value of said coal—not less than the current price for the same fixed by the United States Fuel Administration.

On being advised that the United States Railroad Administration continued to insist that the aforesaid contracts were in force for its benefit, and that settlements on the contract basis should be regarded as final, petitioner suspended shipments thereunder until peremptorily required by the United States Fuel Administration to continue such shipments, accompanied by the threat and warning that the failure to make shipments in accordance with the orders of the United States Fuel Administration, notwithstanding the question in dispute as

to the right of the United States to enforce said contracts, would be dealt with as a violation of the orders of the Fuel Administration and would subject petitioner to the penalties prescribed by the so-called Fuel and Food Act of Congress.

Such warning was supplemented by the further express assurance of the United States Fuel Administration to the effect that if
10 the contracts were not adjudged to be enforceable by the United States the Government price would furnish the basis for settlement. This assurance was formally confirmed on behalf of the United States, as will appear from Exhibit D hereto attached, which is expressly made a part of this petition, to be referred to as often as may be necessary, to the effect that shipments and settlements of coal at the contract price would be without prejudice to the rights of either party in any litigation which might thereafter be instituted by petitioner.

Under these circumstances and in pursuance of the understanding in substance as aforesaid, petitioner accepted, without prejudice, payment of the contract price as part payment, the same being materially less than the market price and materially less than the price promulgated as reasonable by the United States, acting through the United States Fuel Administration.

The amount of coal delivered to the United States Railroad Administration during Federal Control for which payment in full has not been received by petitioner amounts to 171,476.61 tons, shipped between December 31, 1917 and July 1, 1919, for which plaintiff has been paid by the United States the sum of $385,593.76, whereas the minimum market price (the price promulgated by the
11 United States Fuel Administration) for said coal was $486,-997.79 with interest from the date of customary settlement.

Schedules setting forth the amount of coal shipped in the several calendar months during Federal Control, the price called for by the respective contracts with the above mentioned railway corporations, and the price promulgated by the United States through the agency of the United States Fuel Administration as a reasonable price for the coal at the time of delivery to the United States, are shown on the schedules hereto attached, marked Exhibits E, F, and G, which are expressly made a part of this petition to be referred to as often as may be necessary.

VI.

Petitioner avers that the delivery and acceptance of said 171,-476.61 tons of coal (or the taking thereof—as may be determined) under the facts and circumstances herein stated gave rise to an express or implied contract on the part of the United States to pay plaintiff the full market value of the coal taken or purchased from plaintiff as aforesaid, with interest from the date of customary settlement (the 20th day of the calendar month following delivery) at the current rate obtaining in the State of Alabama where
12 the delivery or taking was effected, to wit, eight per cent less the amount of the tentative payments received in partial satisfaction of the obligation by plaintiff, as aforesaid, with interest

thereon. The sum due and owing as aforesaid, as of July 1, 1919, when the transactions became closed, based on the minimum market prices promulgated by the United States as aforesaid, amounted to $107,431.99, which with interest thereon from July 1, 1919, is due petitioner as the minimum basis for settlement.

VII.

Petitioner does not know what use, or disposition or diversion was made of the coal received from petitioner by the United States Railroad Administration under the circumstances herein averred, but petitioner is informed and believes, and upon such information and belief avers that the same was actually consumed not only upon the railroad systems whose owners prior to Federal control had entered into the contracts with petitioner as herein averred, but also upon other systems of railroads under Federal control not definitely and fully known to petitioner.

Petitioner is advised by counsel, informed and believes and upon such advice, information and belief avers that petitioners claim against the United States by reason of the matters herein
13 complained of, cannot be said to arise exclusively out of the possession, use or operation by the president of any specific railroad or railroads, or system or systems of transportation, or to be of such character in each of its several aspects as prior to Federal control could have been brought against any particular carrier or carriers within the meaning and intent of Section 206*a* of the Transportation Act, 1920 (41 Stat. L. 456), approved February 28, 1920.

Wherefore petitioner avers, upon advice, information and belief as aforesaid that, inasmuch as said cause of action does not arise exclusively out of Federal control of any railroad or system of transportation and inasmuch as Section 206 (*a-g*) of said Transportation Act of 1920 does not clearly indicate the Court or Courts in which an action may be brought against the United States upon a contract, express or implied, relating generally to Federal operations or to the settlement of liabilities, in connection with Federal control, but not arising exclusively out of Federal control within the meaning of said Section 206, or not of such character as might, but for Federal control, have been brought against some specific carrier or carriers, said Section 206 is not to be construed as ousting the Court of Claims of general jurisdiction over causes of action against
14 the United States upon contracts express or implied.

Petitioner further avers upon like advice, information and belief that said cause of action, being based in part upon the action of the United States Fuel Administration in the discharge of the functions delegated to it by the President within the purview of Section 25 of the Food and Fuels Act (Lever Act, 40 Stat. L. 276), approved August 10, 1917, is not exclusively referable to the class of controversies dealt with in Section 10 of said Food and Fuels Act conferring exclusive jurisdiction on the United States District Courts to hear and determine all controversies as to the balance due and payable to the owners of property requisitioned by the president

where the compensation fixed by the president is not satisfactory to the person entitled to compensation, and 75 per centum of the amount determined by the president has been paid; and that, accordingly, said section 10 of said Food and Fuels Act should not be construed as ousting the Court of Claims of its general jurisdiction to hear and determine the matters herein complained of.

Petitioner further avers, upon like advice, information and belief, that the enforced delivery to the United States Railroad Administration or else the restricted power imposed upon petitioner to dispose of the coal referred to in this petition to any other person than the President (United States Railroad Administration), resulting from the action of the United States Fuel Administration above referred to, and also that the agreement of the United States Fuel Administration and the acquiescence or agreement of the United States Railroad Administration in the agreement or proposal of the Fuel Administration as to the determination of the compensation due petitioner in the premises, or else the United States Railroad Administration's acceptance of said coal subject to the understanding as to the determination of compensation aforesaid, gave rise either to a cause of action cognizable by the Court of Claims under Section 25 of the Food and Fuels Act or under its general jurisdiction; and that the Court of Claims has not been excluded from entertaining jurisdiction by Section 206*a* of the Transportation Act, 1920, or by said section 10 of said Food and Fuels Act, by reason of the further fact that the cause of action herein sued on is not exclusively or in all of its essential aspects included within the meaning of either of said statutory provisions.

Inasmuch as petitioner is desirous of being advised in what court or courts its cause of action should be prosecuted, in the event that petitioner is mistaken in asserting that the Court of Claims has not been ousted from its general jurisdiction in the premises, petitioner avers that it is a citizen of the State of Delaware; that the coal referred to in this petition was received by the United States Railroad Administration in the Northern District of Alabama; and that the systems of railroad in the possession and under the control of the president under the Federal Control Act, approved March 21, 1918, upon which said coal was used, were not only the systems owned or operated prior to Federal control by the several corporations above referred to, with domiciles for the purpose of suit in the States of Louisiana and Mississippi, but also other systems owned by corporations having citizenship not known to petitioner; and petitioner is, accordingly, not advised, if the Court of Claims has been ousted of its general jurisdiction, whether this cause of action is maintainable in a single proceeding at petitioner's domicile under Section 10 of the Food and Fuels Act or in a series of proceedings against the agent designated by the president under Section 206 of the Transportation Act in the several courts "which," to employ the language of said Section 206, "would have had jurisdiction of the cause of action had it arisen against such carrier"—some of which, in so far as the actual use and consumption of said coal is concerned, are unknown to petitioner.

17 VIII.

Petitioner avers that it is the sole owner of the claim herein sued on, that no part thereof has been paid other than as shown herein, nor has any part of said claim or interest therein been assigned or transferred; and that petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just credit and offsets.

CORONA COAL COMPANY,
By CABANISS, JOHNSTON,
COOKE & CABANISS,
Attorneys for Petitioner.

FORNEY JOHNSTON,
Of Counsel.
732-3-4 Southern Building,
Washington, D. C.

18 EXHIBIT A.

This Contract, made and entered into this 22nd day of May 1917, by and between the Vicksburg, Shreveport & Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, hereinafter for convenience styled the Railway Company, party of the first part, and the Corona Coal & Iron Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, hereinafter styled the Coal Company, party of the second part:

Witnesseth: Subject to conditions, covenants and stipulations hereinafter shown, the Coal Company agrees to sell and deliver, and the Railway Company agrees to buy and accept coal mined from the mines of the Coal Company, on the Corona seam located at or near Corona, Alabama. This coal to be good clean coal, reasonably free from dirt or slate, either a straight run of mine 6″ x 3/8″ unwashed or a 6″ washed run of mine.

2. Tonnage.—The Coal Company agrees to deliver to the Railway Company, and the Railway Company agrees to accept a minimum of one hundred and twenty thousand tons and a maximum of one hundred and forty thousand tons of coal at the Railway Company's option between said limits during the period of two years from July 1st, 1917, in approximately equal monthly shipments.

3. Price.—It is understood and agreed that the price is to be One Dollar, Seventy Two and One Half Cents, ($1.72½) per ton of two thousand pounds (2,000) f. o. b. cars mines for all coal fur-

19 nished the Railway Company from the 1st day of July, 1917, to the 30th day of June, 1919, both dates inclusive. Said price is based on the present miners' wage scale, the price to increase or decrease two cents per ton for one cent increase or decrease in miners' wage scale. Also any National Laws hereafter enacted that

may impose a per ton tax on coal furnished under this contract, shall increase the above mentioned price a like amount, provided, however, that in the event such tax be levied and that either under provision of the law or general custom, the tax be borne by Coal Mining Companies, no increase- cost shall be imposed upon the Railway Company.

4. Terms.—The Railway Company shall pay for said coal on or before the 15th of the following month for all coal shipped by the Coal Company during the preceding month.

5. Weights.—Settlements for coal furnished under this contract shall be on a basis per ton of two thousand (2,000) pounds and the weights shall be determined by the Southern Weighing & Inspection Bureau at point of shipment.

6. Conditions.—It is understood and mutually agreed that strikes, lockouts, and other differences with workmen, accidents to machinery, or casualties, or conditions beyond the control of either party resulting in interruption of service shall be a sufficient excuse for failure caused thereby of either party to comply with the terms of this agreement while such conditions exist, but upon abatement of such conditions the sale and delivery and acceptance of coal under this contract shall be resumed without delay.

If the Coal Company for any reason than above specified should fail to ship coal to the Railway Company, as provided in this contract, the Railway Company shall have the right to go into the open market and buy the coal, charging the coal company for all cost over and above the delivered cost to the Railway Company of coal furnished under this contract.

In consideration of the terms of this contract, it is agreed that the Railway Company shall furnish cars for the loading of the coal herein contracted for.

7. Assignment and Succession.—It is agreed and understood that all terms and conditions, rights and obligations hereof shall inure in favor of and be binding upon the heirs, executors, administrators, legal representatives, successors, assigns and lessees of both parties hereto.

In Witness Whereof, this contract was executed in duplicate by the parties hereto the date and year first above written.

VICKSBURG, SHREVEPORT & PACIFIC RY. CO.,
By LARZ A. JONES.
CORONA COAL & IRON COMPANY,
By B. R. SMITH, *Manager of Sales.*

Witness:
T. H. RYAN.
Witness:
CHAS. J. HARPER.

21 EXHIBIT B.

This Contract, made and entered into this 22nd day of May 1917, by and between the Alabama & Vicksburg Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Mississippi, hereinafter for convenience styled the Railway Company, party of the first part, and the Conora Coal & Iron Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, hereinafter styled the Coal Company, party of the second part:

Witnesseth: Subject to conditions, covenants and stipulations hereinafter shown, the Coal Company agrees to sell and deliver, and the Railway Company agrees to buy and accept coal mined from the mines of the Coal Company, on the Corona seam located at or near Corona, Alabama. This coal to be good clean coal, reasonably free from dirt or slate, either a straight run of mine 6″ x ⅜″ unwashed or a 6″ washed run of mine.

2. Tonnage.—The Coal Company agrees to deliver to the Railway Company, and the Railway Company agrees to accept a minimum of One Hundred and Fifteen Thousand, and a maximum of One Hundred and Thirty-Five Thousand tons of coal at the Railway Company's option between said limits during the period of two years and one month from June 1st, 1917, in approximately equal monthly shipments.

3. Price.—It is understood and agreed that the price is to be One Dollar,, Seventy Two and One Half (1.72½) per ton of two thousand pounds (2,000 lbs.) f. o. b. cars mines for all coal fur-
22 nished to the Railway Company from the 1st day of June, 1917 to the thirtieth day of June, 1919, both dates inclusive. Said price is based on the present miners' wage scale, the price to increase or decrease two cents per ton for each one cent per ton increase or decrease in miners' wage scale. Also any National Laws hereafter enacted that may impose a per ton tax on coal furnished under this contract, shall increase the above mentioned price a like amount; provided, however, that in the event such tax be levied and that either under provision of the law or general custom, the tax be borne by Coal Mining Companies, no increased cost shall be imposed upon the Railway Company.

4. Terms.—The Railway Company shall pay for said coal on or before the 15th of the following month for all coal shipped by the Coal Company during the preceding month.

5. Weights.—Settlements for coal furnished under this contract shall be on a basis per ton of two thousand (2,000) pounds and the weights shall be determined by the Southern Weighing & Inspection Bureau at point of shipment.

6. Conditions.—It is understood and mutually agreed that strikes, lockouts, and other differences with workmen, accidents to machinery, or casualties or conditions beyond the control of either

party resulting in interruption of service shall be a sufficient excuse for failure caused thereby of either party to comply with the terms of this agreement while such conditions exist, but upon abatement of such conditions the *scale* and delivery and acceptance of coal under this contract shall be resumed without delay.

23 If the Coal Company for any reason than above specified should fail to ship coal to the Railway Company, as provided in this contract, the Railway Company shall have the right to go into the open market and buy the coal, charging the coal company for all cost over and above the delivered cost to the Railway Company, of coal furnished under this contract.

In consideration of the terms of this contract, it is agreed that the Railway Company shall furnish cars for the loading of the coal herein contracted for.

7. Assignment and Succession.—It is agreed and understood that all terms and conditions, rights and obligations hereof, shall inure in favor of and be binding upon the heirs, executors, administrators, legal representatives, successors, assigns and lessees of both parties hereto.

It is further understood and agreed that the above and foregoing contract supersedeas and cancels the contract between the above Companies of date October 16th, 1914, for the period ending June 30, 1918.

In Witness Whereof, this contract was executed in duplicate by the parties hereto the date and year first above written.

ALABAMA & VICKSBURG RAILWAY CO.,
By LARZ A. JONES.
CORONA COAL & IRON COMPANY,
By B. R. SMITH.

24 EXHIBIT C.

This Agreement, made in duplicate and entered into this first day of December, Nineteen Hundred and Seventeen, between The Corona Coal Company, organized and created under the laws of the State of Delaware, party of the first part, and hereinafter spoken of as the "Seller," and The Morgan's Louisiana & Texas Railroad and Steamship Company, and The Louisiana Western Railroad Company, and The Lake Charles and Northern Railroad Company, corporations organized and created under the the laws of the State of Louisiana, party of the second part, and hereinafter spoken of as the "Buyer."

Witnesseth That: The Seller hereby agrees to sell to the buyer its requirements of coal for a period of one year, commencing June 15th, and extending to June 15th, 1919, said requirements to be

It is further understood and agreed that the Seller hereby gives to the Buyer the option of buying at the same price herein provided,

hereby declared to be minimum of 70,000 lbs. and maximum of 100,000 lbs. Said coal to be known as "Screened Locomotive Coal" 5/8" x 4" Bar Screen, or 5/8" x 6" Round Hole Screen.

This coal is to be prepared by washing all coal from 2" down through a first-class jig washer and hand-picking all coal from 2 to 4" over one picking table and all coal from 4 to 6" over another, then mixing the three sizes together in the railway car. The purpose of this preparation being with a view of minimizing foreign matter and making coal to be free of fine slack. Said coal to be mined from Townley, Ala., on the St. Louis and San Francisco Railroad Co. and to correspond with sample of coal shipped
25 by the Seller from Townley, Ala., March 24, 1916 in cars C. B. & Q. 172702; C. & A. 09626 and Erie 17168.

The buyer shall not be required to accept coal not conforming with the following approximate analysis:

Moisture	1.6
Volatile matter	34.4
Fixed carbon	54.
Ash	10.
Sulphur	1%

and is understood that the B. T. U. Dry Basis will approximate 13,500 units.

Shipments for the year ending June 15, 1919 to be made as nearly as possible, as follows:

April, May, June and July	6,000	Monthly.
February, March and August	7,000	"
September, October, November, December, January	8,000	"

in the absence of other specific directions from the Buyer. It is understood that the Buyer shall have the right to require such adjustment of the tonnage to be delivered by months as may be necessary to meet its requirements.

It is further agreed that the Buyer will have the option of cancelling agreement January 1st, 1919, by giving notice to Seller not later than Oct. 15th, 1918, or to cancel April 1, 1919, by giving notice to Seller not later than February 1st, 1919, of its intention to do so.

The Seller agrees to load the coal in the Buyer's equipment where possible to do so All cars must be loaded to full visible capacity, but not exceeding more than 10% in excess of the stencilled capacity, and the cars to be so loaded that coal will not fall
26 off in transit. Shipments to be made via such routes, and to such destination as may be prescribed by the Buyer.

All coal delivered under this contract may be inspected at the mines by an authorized representative of the Buyer and the Buyer shall not be required to accept or pay for any coal that may be rejected by its authorized representative; such inspection is based on absolute compliance with the method of preparation described above, and to be final.

Twenty-Five Thousand (25,000) tons per annum over and above the maximum amounts hereinabove stipulated, should its requirements so demand, the deliveries thereof to be made when and as ordered by the Buyer, it being understood that said deliveries are to be made in reasonable monthly shipments, and Buyer will give at least thirty days notice before requiring increased shipments.

Terms of Contract.—Buyer hereby agrees to pay to Seller Two Dollars ($2.00) per ton of two thousand pounds for prepared coal as above stipulated, f. o. b. mines, Townley, Ala., on St. Louis and San Francisco Railroad, price based on wage scale paid by Seller during month of November 1917, per Exhibit A attached. In event of wage scale being increased or reduced, Buyers price will be increased or reduced same amount per ton. Seller to furnish a sworn detail statement of amount of increase or decrease of wages, whenever there is a change in wages during life of contract. Buyer to have privilege of checking records of Seller at mines and home office at any time they see fit.

27 Weight at mines to be verified by the Southern Weighing & Inspection Bureau to govern settlements.

Payments to be made as soon as bills are rendered and checked and audited. Invoices to be rendered in triplicate, daily, covering each car.

It is further mutually understood and agreed that the Seller is not to be held responsible for any delays caused by failure of railroad to furnish cars, or by strikes or unavoidable accidents at the mines preventing mining, but Seller is to commence shipping as soon as such interruptions or strikes are overcome, at contract price.

It is further agreed that if at any time during the term of this contract, the freight rates or divisions may be changed from the rates which may be published in December, 1917 by the St. Louis & San Francisco Railroad and the Illinois Central Railroad Companies, from Townley, Ala. to Anchorage and Algiers, La., the Buyer reserves the right to cancel this contract by giving 30 days notification to the Seller.

The Seller agrees to furnish a bond with good and solvent securities in the sum of Fifteen Thousand Dollars ($15,000.00)
28 to secure its lawful performance of all the provisions of this contract.

CORONA COAL COMPANY,
By B. R. SMITH, *Manager of Sales.*
MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY,
LOUISIANA WESTERN RAILROAD CO.,
LAKE CHARLES & NORTHERN RAILROAD CO.,
By N. P. RANDOLPH, *Purchasing Agent.*

Witness:
W. J. CHURCH.

Approved as to Form:

EXHIBIT D.

United States Fuel Administration,

Washington, D. C.

November 18, 1918.

Corona Coal Company,
Birmingham, Ala.

GENTLEMEN:

We are enclosing you herewith copy of letter which we have today written to Mr. B. P. Phillippe, Fuel Distributor, Central Advisory Purchasing Committee, United States Railroad Administration, which is self explanatory.

In complying with the requisition orders of the United States Fuel Administration for the shipment of coal to the various companies mentioned in that letter, we desire to say that the same is entirely without prejudice to your right to assert a claim
29 against the Railroad Administration or these various railroad companies for any amount to which you may claim you are legally entitled to receive from these companies or the Railroad Administration for the coal so requisitioned, and this regardless of any method of billing by you or of any settlements that may be made by the different railroads or the United States Fuel Administration for such coal. This direction is, also, without prejudice to the right of the United States Railroad Administration or any of these railroads to assert against any claim you may make their rights growing out of any contracts which they allege exist between you and these various companies regardless of the methods of billing by you and the settlement by them for the coal so requisitioned by this Administration.

Yours very truly,

UNITED STATES FUEL ADMINISTRATION,
By W. T. ALDEN,
General Solicitor.

W. T. A.–M. G. C.

(*Enclosure, Exhibit D.*)

November 16, 1918.

Mr. B. P. Phillippe,
Central Advisory Purchasing Committee,
United States Railroad Administration,
Washington, D. C.

DEAR SIR:

Replying to your letter of November 14 concerning the controversy between the Corona Coal Company of Birmingham, Alabama, and the Alabama & Vicksburg, the Vicksburg, Shreveport &

Pacific, and the Morgan's Lousiana & Texas Railroads, over
30 the requisition orders issued by this Administration to that mine for supplying these different railroads with coal, will say that the Corona Coal Company's representatives have called on us today and advise us that the contracts between them and these various companies have been breached and are not enforcible by the United States Railroad Administration and that is their contention; and that this coal should move to these railroads at the applicable mine price.

Under the order of the United States Fuel Administration dated March 20, 1918, Statement 1610, copy of which we are enclosing, it is provided that where coal is requisitioned by this Administration for a consumer from a mine, if there is a contract between the parties, then the coal moves at the Government price. We, of course, cannot determine whether there is a valid enforcible contract between these railroad companies and the Corona Coal Company. We understand that the Railroad Administration takes the position that the contracts are valid and enforcible and that the Railroad Administration has refused to accept the billing of this coal at any price other than the contract price.

We have directed the Corona Coal Company to make shipments in accordance with the requisition orders, and that they should not attach any unusual conditions to the billing which would prevent the free delivery of the coal. They advise us that the Railroad Administration even refuses to pay the contract price for the coal without prejudice to their right to assert a claim against the railroads or the Railroad Administration for the difference between the
31 contract price and the Government price, and that the Railroad Administration is endeavoring to stop them from hereafter asserting any such claim, and they naturally, in view of their position, refuse to accept the contract price and release the railroads and Railroad Administration from liability for the difference between the contract price and the Government price. This results in the coal not being paid for, and of course, we cannot expect any mining company to continue to ship for an indefinite time to a consumer under a requisition order where the consumer is not paying for the coal.

We were in hopes that the railroad companies would adjust this matter with the Corona Coal Company in some satisfactory way between themselves, but it seems to be a matter which the courts will ultimately have to decide, and we do not think that this Administration ought to put either the Corona Coal Company or the Railroad Administration in a position where the right to have this question fairly presented and decided is in any way prejudiced, and we will, therefore, advise the Corona Coal Company that in complying with the requisition orders of the Fuel Administration, it will not, of course, prejudice them in any way regardless of the manner of billing the coal by them or the settlement for the coal by the Railroad Administration against asserting any claim that they may have against the railroad companies or the Railroad Administration for the difference between the contract price and the Government price.

This instruction will, also, be without prejudice to the contention of these different railroad companies and to the United States
32 Fuel Administration that they are entitled to receive this coal at the contract price.

If this is not satisfactory to the Railroad Administration, we should be glad to have you advise us at once, and, if you desire us to do so, we will, of course, cancel the requisition orders.

Yours very truly,

UNITED STATES FUEL ADMINISTRATION,
By W. T. ALDEN,
General Solicitor.

W. T. A.–M. G. C.

EXHIBIT E.

Comparative Statement Covering Shipments of Coal Purchased or Requisitioned by United States and Paid for on Basis of Vicksburg, Shreveport & Pacific Railway Company's Contract Dated May 22, 1917 (Exhibit A), January to October, 1918.

Purchased or requisitioned.	Tons.	Contract. Price.	Contract. Amount.	U. S. Fuel Administration. Price.	U. S. Fuel Administration. Amount.	Difference due plaintiff (without interest).	Interest on difference from date due to July 1, 1919. Date due.	Interest on difference from date due to July 1, 1919. Amount.
1918.								
January	4,112.75	$1.965	$8,081.55	$2.40	$9,870.60	$1,789.05	Feb. 20, 1918	$194.80
February	4,277.05	2.085	8,917.65	2.40	10,264.92	1,347.27	Mar. 20, 1918	137.69
March	3,591.15	2.085	7,487.55	2.40	8,618.76	1,131.21	Apr. 20, 1918	108.08
April	2,981.90	2.085	6,217.26	2.40	7,156.56	939.30	May 20, 1918	83.47
May 1-14	1,889.60	2.085	3,939.82	2.40	4,535.04	595.22		
May 15-24	1,468.60	2.275	3,341.06	2.85	4,185.51	844.45	June 20, 1918	146.68
May 25-31	725.20	2.275	1,649.83	2.75	1,994.30	344.47		
June	4,037.90	2.275	9,186.22	2.75	11,104.22	1,918.00	July 20, 1918	144.92
July	2,366.80	2.275	5,384.47	2.75	6,508.70	1,124.23	Aug. 20, 1918	77.43
August 1-22	3,651.70	2.33	8,508.46	2.75	10,042.17	1,533.71		
August 23-31	1,024.40	2.33	2,386.85	2.85	2,919.54	532.69	Sept. 20, 1918	128.56
September	5,332.25	2.33	12,421.14	2.85	15,196.91	2,772.77	Oct. 20, 1918	154.05
October	3,201.95	2.33	7,460.54	2.85	9,125.56	1,665.02	Nov. 20, 1918	81.40
Totals	38,661.25		$84,985.40		$101,522.79	$16,537.39		$1,257.08

EXHIBIT F.

Comparative Statement Covering Shipments of Coal Purchased or Requisitioned by United States and Paid for on Basis of Alabama & Vicksburg Railway Company's Contract Dated May 22, 1917 (Exhibit B), January, 1918, to June 15, 1919,

Purchased or requisitioned.	Tons.	Contract. Price.	Contract. Amount.	U. S. Fuel Administration. Price.	U. S. Fuel Administration. Amount.	Difference due plaintiff (without interest).	Interest on difference from date due to July 1, 1919. Date due.	Amount.
1918.								
January	4,143.65	$1.965	$8,142.27	$2.40	$9,944.76	$1,802.49	Feb. 20, 1918	$196.22
February	4,244.35	2.085	8,849.47	2.40	10,186.44	1,336.97	Mar. 20, 1918	136.67
March	3,887.45	2.085	8,105.33	2.40	9,329.88	1,224.55	Apr. 20, 1918	117.06
April	2,987.75	2.085	6,229.46	2.40	7,170.60	941.14	May 20, 1918	83.64
May 1-14	1,907.95	2.085	3,978.08	2.40	4,579.08	601.00	June 20, 1918	147.26
May 15-24	1,300.35	2.275	2,958.30	2.85	3,706.00	747.70		
May 25-31	930.50	2.275	2,116.88	2.75	2,558.87	441.99		
June	3,928.50	2.275	8,937.34	2.75	10,803.38	1,866.04	July 20, 1918	140.99
July	3,235.70	2.275	7,361.22	2.75	8,898.18	1,536.96	Aug. 20, 1918	105.88
August 1-22	3,181.15	2.33	7,412.08	2.75	8,748.16	1,336.08	Sept. 20, 1918	117.10
Aug. 23-31	1,050.70	2.33	2,448.13	2.85	2,994.50	546.37		
September	3,067.55	2.33	7,147.39	2.85	8,742.52	1,595.13	Oct. 20, 1918	88.62
October	2,017.60	2.33	4,701.01	2.85	5,750.16	1,049.15	Nov. 20, 1918	51.29
November	3,401.95	2.33	7,926.54	2.85	9,695.56	1,769.02	Dec. 20, 1918	74.69
December	3,132.15	2.33	7,297.91	2.85	8,926.63	1,628.72	Jan. 20, 1919	57.92
1919.								
January	863.90	2.33	2,012.89	2.85	2,462.12	449.23	Feb. 20, 1919	12.97
February	2,544.80	2.33	5,929.38	2.85	7,252.68	1,323.30	Mar. 20, 1919	29.40
March	2,950.90	2.43	6,875.59	2.85	8,410.07	1,534.48	Apr. 20, 1919	23.87
April	5,400.95	2.33	12,584.21	2.85	15,392.70	2,808.49	May 20, 1919	24.96
May	5,492.50	2.33	13,962.52	2.85	15,653.63	1,691.11	June 20, 1919	3.76
Totals	59,670.35		$134,976.00		$161,205.92	$26,229.92		$1,412.30

EXHIBIT G.

Comparative Statement Covering Shipments of Coal Purchased or Requisitioned by United States and Paid for on Basis of Morgan's Louisiana & Texas Railroad Company's Contract Dated December 1, 1917 (Exhibit C), January, 1918, to June 15, 1919.

Purchased or requisitioned.	Tons.	Contract. Price.	Contract. Amount.	U. S. Fuel Administration. Price.	U. S. Fuel Administration. Amount.	Difference due plaintiff (without interest).	Interest on difference from date due to July 1, 1919. Date due.	Interest on difference from date due to July 1, 1919. Amount.
1918.								
January	7,887.75	$2.00	$15,775.50	$2.65	$20,902.54	$5,127.04	Feb. 20, 1918	$558.27
February	3,939.55	2.13	8,391.24	2.65	10,439.81	2,048.57	Mar. 20, 1918	209.42
March	6,790.55	2.13	14,463.87	2.65	17,994.96	3,531.09	Apr. 20, 1918	337.41
April	5,448.25	2.1488	11,707.20	2.65	14,437.86	2,730.66	May 20, 1918	242.76
May 1-14, inclusive	977.00	2.1488	2,099.38	2.65	2,589.05	489.67		
May 15-24, inclusive	2,411.95	2.3528	5,674.84	3.10	7,477.05	1,802.21	June 20, 1918	245.10
May 25-31, inclusive	1,065.35	2.3528	2,507.03	3.00	3,196.65	689.62		
June	5,386.55	2.3528	12,673.47	3.00	16,159.65	3,486.18	July 20, 1918	263.39
July 1-23, inclusive	4,725.45	2.3528	11,118.04	3.00	14,176.35	3,058.31		
July 25-31, inclusive, No. 1 Mine	.....	.....	.....	3.32½	.....	.....	Aug. 20, 1918	313.45
July 25-31, inclusive, No. 2 Mine	1,495.70	2.3528	3,519.08	3.35	5,010.60	1,491.52		
August 1-22, inclusive, No. 1 Mine	757.05	2.3528	1,781.19	3.32½	2,517.19	736.00		
August 1-22, inclusive, No. 2 Mine	2,808.70	2.3528	6,608.31	3.35	9,409.15	2,800.84	Sept. 20, 1918	290.39
August 23-31, inclusive, No. 1 Mine	439.05	2.3528	1,033.00	3.37½	1,481.79	448.79		
August 23-31, inclusive, No. 2 Mine	650.70	2.3528	1,530.97	3.40	2,212.38	681.41		
September, No. 1 Mine	1,541.70	2.3528	3,627.31	3.37½	5,203.24	1,575.93	Oct. 20, 1918	300.67
September, No. 2 Mine	3,663.55	2.3528	8,619.60	3.40	12,456.07	3,836.47		
October, No. 1 Mine	877.75	2.3528	2,065.17	3.37½	2,962.41	897.24	Nov. 20, 1918	188.37
October, No. 2 Mine	2,822.50	2.3528	6,640.78	4.30	9,596.50	2,955.72		
November, No. 1 Mine	586.95	2.3528	1,380.98	3.37½	1,980.96	599.98	Dec. 20, 1918	195.24
November, No. 2 Mine	3,842.90	2.3528	9,041.57	4.30	13,065.86	4,024.29		
December, No. 1 Mine	141.30	2.3528	332.45	3.37½	476.89	144.44	Jan. 20, 1919	58.78
December, No. 2 Mine	1,440.10	2.3528	3,388.27	3.40	4,896.34	1,508.07		

Comparative Statement Covering Shipments of Coal—Continued.

Purchased or requisitioned.	Tons.	Contract.		U. S. Fuel Administration.		Difference due plaintiff (without interest).	Interest on difference from date due to July 1, 1919.	
		Price.	Amount.	Price.	Amount.		Date due.	Amount.
1919.								
January, No. 1 Mine	365.05	2.3528	858.89	3.37½	1,232.04	373.15	Feb. 20, 1919	12.06
January No. 2 Mine	43.10	2.3528	101.42	3.40	146.54	45.12		
February, No. 1 Mine	341.85	2.3528	804.30	3.37½	1,153.74	349.44	Mar. 20, 1919	65.84
February, No. 2 Mine	2,409.50	2.3528	5,669.10	3.40	8,192.30	2,523.20		
March, No. 1 Mine	707.55	2.3528	1,664.72	3.37½	2,387.98	723.26	Apr. 20, 1919	62.07
March, No. 2, Mine	3,119.50	2.3528	7,339.53	3.40	10,606.30	3,266.77		
April, No. 1 Mine	40.55	2.3528	95.41	3.37½	136.86	41.45	May 20, 1919	11.48
April, No. 2 Mine	1,215.65	2.3528	2,860.18	3.40	4,109.41	1,249.23		
May, No. 1 Mine	87.60	2.3528	206.11	3.37½	295.65	89.54	June 20, 1919	4.86
May, No. 2 Mine	2,006.45	2.3528	4,720.77	3.40	6,821.93	2,101.16		
June, No. 1 Mine	919.05	2.3528	2,182.34	3.37½	3,101.79	919.45	July 20, 1919	.....
June, No. 2 Mine	2,188.60	2.3528	5,149.34	3.40	7,441.24	2,291.90		
	73,145.00		$165,681.36		$224,269.08	$58,637.72		$3,357.58

36 UNITED STATES OF AMERICA,
District of Columbia:

Before me, the undersigned authority, in and for the District of Columbia, personally appeared Forney Johnston, who being by me first duly sworn, doth depose and say that he is of Counsel for petitioner in the above and foregoing cause; that the averments of fact set out in the foregoing amended petition are true to the best of his knowledge, information and belief, and that attached to the same is a true and correct copy of a resolution of the Board of Directors of petitioner authorizing the prosecution of this suit and the verification of any and all petitions in the premises.

FORNEY JOHNSTON.

Sworn to and subscribed before me this 12th day of January, 1922.

[SEAL.] JOHN P. CAGE,
Notary Public, District of Columbia.

37 III. *Demurrer to the Amended Petition.*

Filed January 23, 1922.

The United States, by its Attorney General, demurs to the amended petition filed herein on the 20th day of January, 1922, upon the following grounds, to-wit:

1.

The facts alleged in the petition do not constitute a cause of action within the jurisdiction of this court.

2.

The petition does not state facts sufficient in law to constitute a cause of action.

Respectfully submitted,

ROBERT H. LOVETT,
Assistant Attorney General.

PERRY W. HOWARD,
Special Assistant to the Attorney General.

IV. *Submission of Demurrer.*

On February 6, 1922, the demurrer to the amended petition was submitted, without argument, by Mr. Perry W. Howard, for defendant, and by Mr. Forney Johnston, for plaintiff.

38 V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Thirteenth day of February, A. D., 1922, judgment was ordered to be entered — follows:

This case having been heard upon the defendant's demurrer to the plaintiff's amended petition, the court, upon consideration whereof is of opinion that said demurrer is well taken:

It is therefore ordered, adjudged and decreed that the defendant's demurrer to plaintiff's amended petition be sustained, and that the petition be and the same hereby is dismissed.

By THE COURT.

(See opinion in Corona Coal Co., October 31, 1921, to which the court adheres.)

39 VI. *Opinion of Court Referred to.*

Court of Claims of the United States.

No. 90–A.

(Decided October 31, 1921.)

CORONA COAL COMPANY

v.

THE UNITED STATES.

HAY, *Judge,* delivered the opinion of the court:

This is a petition brought by the Corona Coal Company to recover from the United States the sum of $107,431.99. To this petition of the plaintiff the defendant has demurred.

The petition alleges in substance that the plaintiff's chief business is the mining and sale of coal; that it had entered into contract with certain railroads to supply them with coal for a certain period; that subsequent to the date of these contracts the railroads were taken over by the Government; that the Railroad Administration insisted that it was entitled to have the coal provided for in these contracts delivered at the same price which the plaintiff had argreed upon with the railroads; that the plaintiff refused to deliver the coal at that price; and that therefore the United States Fuel Administration requisitioned 171,476.61 tons of coal, which under said requisition were delivered to the United States Railroad Administration, and that the plaintiff was paid the price by the Government which had been agreed upon by it and the railroads before they were taken over, the sum paid to the plaintiff being $385,593.76, while the price fixed by the Fuel Administration for said coal was $486,997.79, and the plaintiff sues for the difference in price, which is stated in the petition as the sum of $107,431.99.

The question arises whether or not this court has jurisdiction to entertain this suit either under section 10 or section 25 of the Lever Act, 40 Stat. 276, 279, 284. The Supreme Court of the United States in the case of Pfitsch, decided June 1, 1921, has expressly held that section 10 of the Lever Act conferred jurisdiction only on the District courts.

Section 25 of the Lever Act confers jurisdiction on this court in cases where the President requisitions and takes over the plant or where the President requires producers to sell their products only to the United States. It is not alleged in the petition that the plaintiff's plant was taken over, or that it was required to sell its products only to the United States and under conditions recited in the section. The allegation is that so many tons of coal were requisitioned for the use of the United States, and Congress having designated a jurisdiction in which the plaintiff must proceed, it is the duty of this court to give effect to its designation. United States v. Pfitsch, supra.

The demurrer of the defendant is therefore sustained so far as the special count is concerned. The petition contains the "Common Counts," but these do not comply with the provisions of section 159 of the Judicial Code applicable to petitions in this court. The plaintiff will therefore be required to make these counts more specific unless relying upon the special count for the facts it elects to strike out these "Common Counts."

The plaintiff is given thirty days in which to amend its petition.

Graham, Judge; Downey, Judge; Booth, Judge, and Campbell, Chief Justice, concur.

40 VII. *Plaintiff's Application for and the Allowance of an Appeal.*

Application is hereby made for an order allowing an appeal by the Claimant to the Supreme Court of the United States from the judgment of dismissal rendered in the above styled cause on, to wit, the thirteenth day of February, 1922.

FORNEY JOHNSTON,
Attorney for Claimant.

Filed April 4, 1922.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

April 10, 1922.

41 Court of Claims.

No. 90–A.

CORONA COAL COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the submission of the case on demurrer; of the judgment of the court sustaining the demurrer and dismissing the petition; of the opinion of the court, filed October 31, 1921, to which the court adheres; of the plaintiff's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Fifteenth day of April, A. D., 1922.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 28,912. Court of Claims. Term No. 380. Corona Coal Company, appellant, vs. The United States. Filed May 5th, 1922. File No. 28,912.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

CORONA COAL COMPANY, APPELLANT,
v.
THE UNITED STATES. } No. 380.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Court of Claims dismissing the petition of the plaintiff upon the ground that that court had no jurisdiction of the case. The petition is very long, but its allegations may fairly be summarized in the language of the Court of Claims as follows (p. 22):

> The petition alleges in substance that the plaintiff's chief business is the mining and sale of coal; that it had entered into contract with certain railroads to supply them with coal for a certain period; that subsequent to the date of these contracts the railroads were taken over by the Government; that the Railroad Administration insisted that it was entitled to have the coal provided for in these contracts delivered at the same price which the plaintiff

had agreed upon with the railroads; that the plaintiff refused to deliver the coal at that price; and that therefore the United States Fuel Administration requisitioned 171,476.61 tons of coal, which under said requisition were delivered to the United States Railroad Administration, and that the plaintiff was paid the price by the Government which had been agreed upon by it and the railroads before they were taken over, the sum paid to the plaintiff being $385,593.76, while the price fixed by the Fuel Administration for said coal was $486,997.79, and the plaintiff sues for the difference in price, which is stated in the petition as the sum of $107,431.99.

The action, therefore, is to recover from the United States because the Fuel Administration compelled the plaintiff to live up to the contracts which it had made with railroad companies prior to the taking over of the railroads by the President. The contracts which it had made with the railroads are attached to the petition as Exhibits A, B, and C (pp. 8–13). Exhibits A and B are practically identical in their terms, and each contains a provision that all terms and conditions, rights and obligations, "shall inure in favor of and be binding upon the heirs, executors, administrators, legal representatives, successors, assigns, and lessees of both parties hereto." Paragraph 7 of each contract, pages 9 and 11. Each of these contracts also contains the provision that if the coal company, for any reason other than those specified, should fail to ship coal as provided in the

contract, the railway company "shall have the right to go into the open market and buy the coal, charging the coal company for all cost over and above the delivered cost to the Railway Company, of coal furnished under this contract." Paragraph 6, pages 9 and 11. Under none of the contracts is the railway company required to do anything except to take and pay for the coal and furnish the cars to transport it. After the controversy arose, and on November 18, 1918, the United States Fuel Administration wrote a letter to the plaintiff (Exhibit D, p. 14) containing the following:

> In complying with the requisition orders of the United States Fuel Administration for the shipment of coal to the various companies mentioned in that letter, we desire to say that the same is entirely without prejudice to your right to assert a claim against the Railroad Administration or these various railroad companies for any amount to which you may claim you are legally entitled to receive from these companies or the Railroad Administration for the coal so requisitioned, and this regardless of any method of billing by you or of any settlements that may be made by the different railroads or the United States Fuel Administration for such coal. This direction is also without prejudice to the right of the United States Railroad Administration or any of these railroads to assert against any claim you may make their rights growing out of any contracts which they allege exist between you and these various companies, regardless of

> the methods of billing by you and the settlement by them for the coal so requisitioned by this Administration.

The coal having been bought and paid for at the contract price, the only point which the plaintiff can be said to have "saved" was its right to assert a claim against the Railroad Administration or the railroad companies for the amount which it might claim to be legally entitled to receive from those companies or the Railroad Administration for the coal so furnished.

The United States has filed a motion to dismiss the appeal upon the ground that it has been taken contrary to the provisions of Section 154 of the Judicial Code because, after the decision of the Court of Claims, and prior to taking the appeal, the plaintiff begun three actions in the District Court of the United States for the Eastern District of Louisiana against James C. Davis, as Agent for the President under the Transportation Act of 1920, which actions are based upon the same causes of action as are set forth in the petition herein.

ARGUMENT.

I.

The appeal should be dismissed.

Section 154 of the Judicial Code provides as follows:

> No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any

> other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States.

It appears from the record that the judgment of the Court of Claims dismissing the plaintiff's petition was rendered on the 13th day of February, 1922 (p. 22), and that the appeal therefrom was allowed on April 10, 1922 (p. 23). It appears from the motion to dismiss that on or about the 27th day of February, 1922, the plaintiff began actions in the District Court in Louisiana against James C. Davis, as agent of the President under the Transportation Act of 1920, to enforce the same causes of action. Section 206 (a) of the Transportation Act of 1920 (41 Stat. 461) provides:

> Actions at law, suits in equity, and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this Act. Such actions, suits, or proceedings may, within the periods

> of limitation now prescribed by State or Federal statutes but not later than two years from the date of the passage of this Act, be brought in any court which, but for Federal control, would have had jurisdiction of the cause of action had it arisen against such carrier.

It would seem to be apparent, therefore, that this appeal, being in violation of Section 154 of the Judicial Code, should be dismissed.

II.

Plaintiff's alleged cause of action should be brought under section 206 (a) of the transportation act against the agent of the President and not in the Court of Claims against the United States.

When the President took over control of the railroads, he found that the plaintiff had made contracts with certain of these railroads for furnishing them coal at a fixed price per ton. Under Section 25 of the Lever Act of August 10, 1917 (40 Stat. 276, 284), the President was authorized and empowered to fix the price of coal, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, and storage thereof among dealers and consumers, and it was further provided that "the maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith, prior to the establishment and publication of maximum prices by the commission." It will be observed that the

prices so fixed are maximum prices. There is no reference to minimum prices, nor is there any indication of an attempt upon the part of the United States to establish a minimum price below which coal should not be sold, nor to compel sale at the maximum price or guarantee the payment of the maximum price. The Corona Coal Company attempted to repudiate its contracts with the railroad company which were in existence at the time federal control began and to obtain for itself prices in excess of those under which it was obligated to furnish the coal, the price fixed by the President under the Lever Act being greater than that fixed by its contracts. The Railroad Administration refused to submit to this, and the Fuel Administration, having the power to require distribution and apportionment of all coal produced, required it to furnish the coal to the railroads, and the Railroad Administration refused to pay more than the contract price. If the railroad companies had been operating their roads and the Fuel Administration had compelled the Corona Coal Company to furnish coal to them, the question of the amount which they should have paid for their coal would have been determined in a suit by the Corona Coal Company against the railroads—that is, its cause of action "would have been of such character as prior to federal control could have been brought against such carrier." The cause of action is, therefore, one to be brought against the Agent of the President, for it arose out of the possession,

use, or operation by the President of the railroads. This would seem to be clear. Furthermore, Congress has made special provision for paying judgments in such actions, for by subdivision (e) of Section 206 of the Transportation Act it has provided (41 Stat. 462):

> Final judgments, decrees, and awards in actions, suits, proceedings, or reparation claims, of the character above described, rendered against the agent designated by the President under subdivision (a), shall be promptly paid out of the revolving fund created by section 210.

This was clearly understood at the time the controversy arose. Plaintiff did not attempt to save or keep alive or reserve any cause of action against the United States. The only thing reserved was a claim against the Railroad Administration or the railroads. Exhibit B, page 14.

The proclamation of the President dated December 26, 1917, taking over the railroad systems, contained, among other things, this language:

> Until and except so far as said director shall from time to time by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers, in the names of their respective companies. * * *
>
> Except with the prior written assent of said director, no attachment by mesne process or

> on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said director may, by general or special orders, otherwise determine.

Under the Federal Control Act of March 21, 1918 (40 Stat. 451, Section 12), it is provided that money derived from the operation of the carriers during federal control, unless otherwise directed by the President, should not be covered into the Treasury but should remain in the custody of the same officers, and the accounting thereof should be in the same manner and form as before federal control. Disbursements therefrom should be made in the same manner as before federal control, and for such purposes as under the Interstate Commerce Commission classification of accounts were chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with federal control as the President might direct. By Section 10 of that Act it was provided that carriers, while under federal control, should be subject to all laws and liabilities as common carriers except in so far as should be inconsistent with any act applicable to federal control or within the order of the President. Actions at law or suits in equity might be brought by and against such carriers and judgments rendered, and it should be no defense to an action that the carrier was an instrumentality or

agency of the Federal Government, but no process, mesne or final, should be levied against any such property under federal control. In construing this section in the case of *Dampskies Actieselskabit Sangstag* v. *Hustis* (D. C. Mass. 1919, 257 Fed. 862), the court said:

> The intention underlying section 10 of the Railroad Act of March 21, 1918 (40 Stat. 456, c. 25 (Comp. St. 1918, §3115-3/4j), is clear. It was that the railroads, although under federal control, should continue to be subject to all legal liabilities, enforceable in the ordinary way as if federal control did not exist, except that attachment on mesne process and levy on execution were forbidden.

III.

The petition alleges no cause of action against the United States.

The petition sets forth at great length facts which are in reality simple, as shown in the opinion of the Court of Claims. The gist of it is that the Fuel Administration compelled the plaintiff to furnish coal for the operation of the railroads, and the Railroad Administration refused to pay more than the contract price, which price was less than that fixed by the Fuel Administration as the price to be paid by those who did not have contracts made in good faith prior thereto. Obedience to the orders of the Fuel Administration, even at a price less than a claimant had previously contracted to sell to others, does not give rise to a cause of action against the

United States. *Morrisdale Coal Company* v. *United States*, 259 U. S. 188. It is even more obvious that no cause of action arises against the United States because the Fuel Administration compelled the plaintiff to furnish the coal without attempting to fix a price, other than the one at which the plaintiff had contracted to deliver it. The purpose of the Lever Act was not to increase the price of coal, but to keep it within reasonable bounds. It did not purport to interfere with existing contracts made in good faith, nor did it seek to protect those who, upon one pretext or another, saw fit to violate existing contracts for the purpose of securing higher prices. It is difficult to conceive of any good reason either in law or in morals why the plaintiff should be given a cause of action against the United States based upon its own refusal to carry out contracts made in good faith with these railroad companies. It is difficult to find any reason whatever for its refusal to carry out the contracts, except a hope that by so doing it could acquire a cause of action against the United States and thereby reap a profit from the needs of the country in time of war.

The plaintiff seeks to excuse its conduct by alleging various considerations which moved it to enter into the contracts for supplying coal to the railroad companies, which it claims did not continue after Government control. This is immaterial. The contracts themselves contained no stipulations by the railroads to do anything more than accept and pay for the coal at the contract price, and to furnish the

cars to deliver it. It is not alleged that these obligations were not performed. It offers as a legal explanation the specious reason that the contracts were not formally assigned to the President when he took control of the railroads and that it was not required to accept the President in place of the railroads. Two of the contracts expressly provided that the rights and obligations thereof should inure in favor of and be binding upon the heirs, executors, administrators, legal representatives, successors, assigns, and lessees of both parties. Without attempting to discuss the nice distinctions and limitations of which these words might be susceptible, it would indeed seem strange to hold that the President of the United States, in time of war and under the Acts by virtue of which he took over the operation of the railroads, was not in some sense the legal representative of the railroad companies.

It would seem that the possession and operation of the railroads by the President was somewhat analogous to the case of a receivership, and it is well settled that receivers of a corporation may adopt and enforce contracts made prior to the receivership. *United States Trust Company* v. *Wabash, etc., Railroad Company*, 150 U. S. 287; *Girard Life Insurance Company* v. *Cooper*, 162 U. S. 529; *Commonwealth* v. *Franklin Insurance Company*, 115 Mass. 278. And the rule which gives the receiver the right is not reciprocal—the other party must perform if the receiver so elects. Beach on *Receivers*, page 332.

There is another and, as we think, more logical view to take of the situation. When the President took over the railroads and the control thereof and through the officers acting under his authority required the plaintiff to fulfill the contracts which it had made with the railroads, he in effect took over the contracts themselves. The Joint Resolution of April 6, 1917, declaring the existence of a state of war empowered the President to employ the resources of the Government to carry on the war and pledged all the resources of the country to bring it to a successful termination. When, to assist in bringing about that result, he took over the railroads and railroad systems, can it be said that he did not take over and apply to the prosecution of the war not merely the tracks, cars, and stations but their contracts, resources, rights, and appurtenances of every kind, including the rights which they had to demand fulfillment by those who had made contracts to supply them with the facilities and means of operation? It seems to us absurd to say that in the exercise of this supreme national power the President had to obtain the consent of the Corona Coal Company to use, appropriate, and enjoy the benefits of these existing contracts. The power of the Government to take for public use contracts, as well as physical properties, is beyond question. See *Omnia Commercial Company* v. *United States*, April 9, 1923. This would seem to be a complete answer to any argument based upon the abstract principles of novation, subrogation, or assignment. The President chose to avail himself of these contracts

as part of the railroad property, and he was not required to ask the consent or approval of the Corona Coal Company or of anyone else.

There was no contract, express or implied, on behalf of the United States that the plaintiff should receive the *maximum* price fixed for coal by the Fuel Administration. There was no act of Congress requiring that price to be paid. There was no breach of any contract by the United States. The breach was by the plaintiff when it defied the President and refused to carry out its contracts with the railroads. The cause of action is not based on any act of any officer of the United States. It is based on the plaintiff's own act in using the necessities of the country in war time as a pretext for avoiding its contracts. No cause of action under Section 10 of the Lever Act was stated, based upon the requisitioning of property, the fixing of a price by the President and an election to take 75 per cent of that price and sue for the balance necessary to make just compensation.

It is not even alleged that the price paid under the contract was not fair and just compensation.

IV.

The appellant has sustained no damage.

Under no view of the case is it possible to see how the plaintiff has sustained any damage in the legal sense of the word. It has received all that it could possibly, in law, be held entitled. As we understand it, the plaintiff concedes that, if the railroads had not

been taken over by the President, it would have been under obligation to furnish the coal in accordance with its contract. Whether it concedes it or not, such would have been the fact. If it had refused to deliver under the terms of two of the contracts, the railroad companies were expressly authorized to buy in the open market and charge the plaintiff with the difference. Whether that provision had been in the contract or not, the railroads would have had the right, upon failure of the plaintiff to perform the contract, to buy in the market and the difference between the amount paid and the contract price would have been the measure of damages.

CONCLUSION.

The appeal should be dismissed or the judgment appealed from affirmed.

JAMES M. BECK,
Solicitor General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.

APRIL, 1923.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

CORONA COAL COMPANY, APPELLANT,
v.
THE UNITED STATES. } No. 380.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO DISMISS.

Comes now the Solicitor General of the United States and moves the court to dismiss this appeal upon the ground that it is taken and prosecuted contrary to the provisions of Section 154 of the Judicial Code, which provides as follows:

> No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States.

The appeal is from a judgment of the Court of Claims dismissing the petition of the plaintiff for

want of jurisdiction. The judgment of the Court of Claims was entered on the 13th day of February, 1922. The appeal therefrom was allowed on April 10, 1922. Meanwhile, and on or about the 27th day of February, 1922, the plaintiff began three actions in the District Court of the United States for the Eastern District of Louisiana against James C. Davis, as Agent for the President of the United States of America under the Transportation Act of 1920, which actions are now pending and undetermined and the causes of action therein set forth are the same causes of action set forth in the petition herein, as will appear from certified copies of the petitions in said actions filed with the clerk of this court.

The cause of action in the Court of Claims is summarized, in the opinion of that court (p. 22), as follows:

> The petition alleges in substance that the plaintiff's chief business is the mining and sale of coal; that it had entered into contract with certain railroads to supply them with coal for a certain period; that subsequent to the date of these contracts the railroads were taken over by the Government; that the Railroad Administration insisted that it was entitled to have the coal provided for in these contracts delivered at the same price which the plaintiff had agreed upon with the railroads; that the plaintiff refused to deliver the coal at that price; and that therefore the United States Fuel Administration requisitioned 171,476.61 tons of coal, which under said requisition were de-

livered to the United States Railroad Administration, and that the plaintiff was paid the price by the Government which had been agreed upon by it and the railroads before they were taken over, the sum paid to the plaintiff being $383,593.76, while the price fixed by the Fuel Administration for said coal was $486,997.79, and the plaintiff sues for the difference in price, which is stated in the petition as the sum of $107,431.99.

Section 206 (a) of the Transportation Act, 41 Stat. 461, provides as follows:

> Actions at law, suits in equity, and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act, or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this Act. Such actions, suits, or proceedings may, within the periods of limitation now prescribed by State or Federal statutes but not later than two years from the date of the passage of this Act, be brought in any court which but for Federal control would have had jurisdiction of the cause of action had it arisen against such carrier.

Pursuant to this Act the President duly designated the said James C. Davis as his Agent, and said actions pending in the District Court are brought to enforce against the President, through his said agent, the same causes of action as are set forth in the petition herein in the Court of Claims, and said causes of action arose while the President was in respect thereto acting under the authority of the United States.

Wherefore it is respectfully submitted that this appeal should be dismissed.

JAMES M. BECK,
Solicitor General.

APRIL, 1923.

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 62

CHEROKEE COAL COMPANY, *Appellant*,

v.

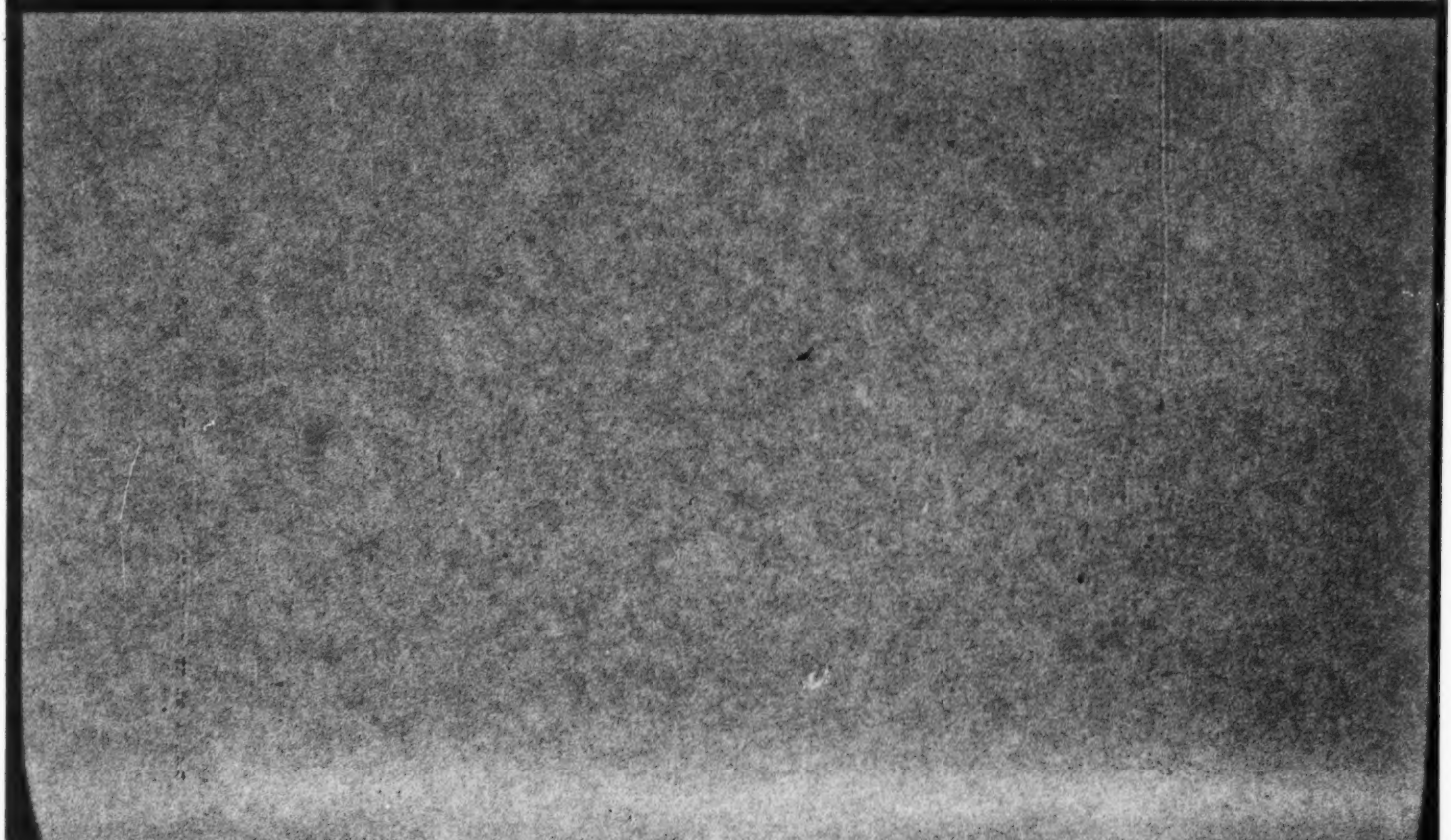
THE UNITED STATES

Appeal from Court of Claims.

ANSWER TO MOTION TO DISMISS AND RULE TO SHOW CAUSE

FORNEY JOHNSTON,
Attorney for Appellant.

November, 1923.



In the Supreme Court of the United States

OCTOBER TERM, 1923.

No. 42.

CORONA COAL COMPANY, *Appellant*,

v.

THE UNITED STATES

Appeal from Court of Claims.

ANSWER TO MOTION TO DISMISS AND RULE TO SHOW CAUSE

Comes now Corona Coal Company, Appellant in the above-styled proceeding, and for answer to the rule ordered herein on October 8th, that cause be shown by Appellant why this appeal should not be dismissed and to the motion to dismiss filed herein on behalf of the United States, says:

1. The actions instituted by Plaintiff in the District Court of the United States against James C. Davis, as agent for the President of the United States (as nominal defendant) under Section 206(a), Transportation Act, 1920, is not such suit or process as is contemplated by Section 154 of the Judicial Code.

2. The actions pending in the District Court of the United States against James C. Davis, as Agent for the President under the Transportation Act, 1920, are not pending against

> "any person who, *at the time when the cause of action alleged in such suit or process arose*, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States."

At the time when the cause of action alleged in the actions in the District Court arise, James C. Davis was not an agent of the President or acting or professing to act in respect to the matters alleged in the suit, nor acting or professing to act mediately or immediately under the authority of the United States.

The cause of action set out in said suits arose during Federal control of railroads, as appears from the face of the complaint. James C. Davis was appointed Director General and agent of the President under Section 206(a) by Executive order dated March 26, 1921.

3. The action in the Court of Claims in which this appeal was taken is based upon a contract express or implied under averments which, appellant conceives, confer jurisdiction upon the Court of Claims. By demurrer and argument in said action in the Court of Claims, counsel for the

United States took the position that the cause of action thus asserted in the Court of Claims should properly be brought in the District Courts, *against James C. Davis as Agent of the President of the United States*, under Section 206(a) of the Transportation Act (41 Stat. L. 461).

The Court of Claims held that the cause of action presented by the petition filed in that Court was proper to be brought only in the District Courts *against the United States*, under Section 10 of the Lever Act (40 Stat. L. 276, 779).

The Statute of Limitations fixed by Section 206(a) of the Transportation Act (which counsel for the United States contended in this proceeding is the statute controlling the action) is two years from the date of approval of the Transportation Act—February 28, 1920.

In view of this diversity of the opinion as to the proper forum and in order to avoid the bar of the statute of limitations should the position of the United States be sustained, it was necessary that Appellant should file suit in the District Courts against the United States (bringing the suit against James C. Davis as agent of the President as the nominal defendant by virtue of the requirements of the Statute), and such actions were accordingly filed within the two-year period fixed by the Act.

4. Appellant respectfully avers that the institu-

tion of these actions against the United States in the District Court by suit against the agent of the President in order to avoid the bar of the statute of limitations is not within the meaning of Section 154 of the Judicial Code.

Appellant avers that Section 154 is intended to prevent contemporaneous actions against the United States and against a person (other than the United States) for the same cause of action under such circumstance as that a judgment against the person other than the United States might by the latter be made the basis of a claim for reimbursement against the United States. The statute plainly does not contemplate cases where both suits are in substance and effect against the United States. Here, both actions are against the United States.

5. The action against James C. Davis, as Agent of the President, in the District Courts does not purport to be against

> "any person who at the time when the cause of action alleged in such suit or process arose was in respect thereto acting or professing to act mediately or immediately under the authority of the United States."

It is, in fact, an action against the United States. James C. Davis is a mere nominal defendant designated under the requirements of Sec-

tion 206(a) for convenience in the liquidation by the President of the obligations of the United States arising out of Federal control.

At the time when the cause of action arose which is sued on in the Court of Claims against the United States and in the District Court against James C. Davis (a nominal agent), as statutory defendant in said District Court actions, the said Davis was not "in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States." He had nothing to do with the matter, not having been appointed as agent of the President until the Executive order issued March 26, 1921.

WHEREFORE, it is respectfully submitted that the rule to show cause should be discharged and the motion to dismiss should be dismissed.

FORNEY JOHNSTON,
Attorney for Corona Coal Co.

November 5, 1923.

CORONA COAL COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 42. Argued November 23, 26, 1923.—Decided January 7, 1924.

Where coal, requisitioned by the Fuel Administration for the Railroad Administration, was paid for by the latter at prices fixed in contracts between certain carriers, which it took over, and the coal owner, *held:*

(*a*) That the owner's claims against the Railroad Administration, reserved in the requisition, for the difference between the price paid and the greater price then fixed generally by the Fuel Administration, were causes of action arising out of the possession, use and operation of the carriers by the President, within Transportation Act, § 206a, authorizing suit against the agent appointed by him. P. 539.

(*b*) Under Jud. Code, § 154, the institution and pendency of such actions in the District Court prevents prosecution of an appeal pending here from an earlier judgment of the Court of Claims rejecting a claim against the United States on the same cause. *Id.*

(*c*) This prohibition of § 154 cannot be avoided upon the ground that the later actions were brought to avoid the time limitation of the Transportation Act. *Id.*

Appeal to review 57 Ct. Clms. 607, dismissed.

APPEAL from a judgment of the Court of Claims dismissing a petition.

Mr. Forney Johnston for appellant.

The actions instituted in the District Court against James C. Davis, as agent of the President (as nominal defendant), under § 206a, Transportation Act, 1920, are not such suits or process as are contemplated by § 154, Jud. Code.

They are not pending against any person who, when the cause of action arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

The causes of action arose during federal control of railroads. Davis was appointed Director General and Agent of the President, under § 206a, by Executive Order of March 26, 1921.

The action in the Court of Claims is based upon a contract, express or implied, under averments which, appellant conceives, confer jurisdiction upon the Court of Claims. By demurrer and argument in that action, counsel for the United States took the position that the cause should properly be brought in the District Court, against Davis, as agent of the President, under § 206a. The Court of Claims held that the cause of action before it was proper to be brought only in the District Court against the United States, under § 10 of the Lever Act. The statute of limitations fixed by § 206a is two years from the date of approval of the Transportation Act,—February 28, 1920. In view of this diversity of opinion as to the proper forum, and in order to avoid the bar of the statute should the position of the United States be sustained, it was necessary that appellant should file the actions in the District Court.

Section 154, Jud. Code, is intended to prevent contemporaneous actions against the United States and against a person (other than the United States), for the same cause of action, under such circumstances that a judgment against the person might be made the basis of a claim by him for reimbursement, against the United States. The statute does not contemplate cases where both suits are in substance and effect against the United States, as here.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the briefs, for the United States.

Mr. Justice SUTHERLAND delivered the opinion of the Court.

Appellant sued in the Court of Claims for a balance alleged to be due for coal delivered to the United States. Some time prior to the delivery appellant had entered into contracts with certain railroad companies to supply them with coal for specified periods of time and at stated prices. Upon the passing of the railroads into the control of the Government, by virtue of the President's proclamation of December 26, 1917, 40 Stat. 1733, the Railroad Administration claimed the right to enforce these contracts. The right was denied; whereupon the Fuel Administration requisitioned the coal "without prejudice to your [appellant's] right to assert a claim against the Railroad Administration or these various railroad companies," for any amount claimed to be legally payable. The Railroad Administration paid the prices fixed by the contracts, asserting that these were the measure of its liability. The general price for coal theretofore fixed by the Fuel Administration was more than the contract price, and this action was for the difference. The court below sustained a demurrer to the petition and dismissed it. After the rendition of judgment and before the appeal to this Court, appellant brought actions in the Federal District Court for the Eastern District of Louisiana against James C. Davis, as Agent for the President under the Transportation Act of 1920, c. 91, 41 Stat. 456, the causes of action therein set forth being the same as that set forth in the present case. These alleged causes of action arose out of the possession, use and operation by the President of the railroads in question and come within the provisions of § 206 (a) of the act, c. 91, 41 Stat. 461.

The Government has submitted a motion to dismiss the appeal, relying upon the provisions of § 154 of the Judicial Code, which reads:

"No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom,

any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States."

At the time the alleged causes of action arose the President was acting under the authority of the United States, and the actions being against an agent appointed by and acting for him, fall within the terms of the statute just quoted. It is urged, however, that the actions were brought, *ex necessitate rei*, because they were about to become barred by expiration of the statutory period of limitation and that, for this and other reasons, the case is not within the spirit of § 154 properly construed. But the words of the statute are plain, with nothing in the context to make their meaning doubtful; no room is left for construction, and we are not at liberty to add an exception in order to remove apparent hardship in particular cases. See *Amy* v. *Watertown*, 130 U. S. 320; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 281, 295; *United States* v. *First National Bank*, 234 U. S. 245, 259–260.

Appeal dismissed.

BALTIMORE & OHIO SOUTHWESTERN RAIL-